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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARK HARRIS,

Plaintiff,

vs.

UNITED PARCEL SERVICE, INC., an
Ohio Corporation; TONY AGENJO;
KIMBERLY MUNIZ; and DOES 1
through ONE HUNDRED, inclusive,

Defendants.

CASE NO. C-08-0315 MMC

**NOTICE OF MOTION AND
ADMINISTRATIVE MOTION OPPOSING
DESIGNATION OF *HARRIS I* (CASE NO.
C-08-0315 MMC) AND *HARRIS II* (CASE
NO. C-08-01810 JSW) AS RELATED**

[NDCA CIVIL LOCAL RULE 3-12]

MARK HARRIS,

Plaintiff,

vs.

UNITED PARCEL SERVICE, INC., an
Ohio Corporation; TONY AGENJO;
KIMBERLY MUNIZ; and DOES 1
through ONE HUNDRED, inclusive,

Defendants.

CASE NO. C-08-01810 JSW

TO THE HONORABLE MAXINE M. CHESNEY AND THE HONORABLE
JEFFREY S. WHITE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA, AND TO PLAINTIFF MARK HARRIS AND HIS
ATTORNEYS OF RECORD, STEVEN J. MEHLMAN, MARC L. TERBEEK, AND
MATTHEW M. OLIVERI OF MEHLMAN-TERBEEK, LLP:

PLEASE TAKE NOTICE that Defendants United Parcel Service, Inc. ("UPS"), Tony Agenjo, and Kim Muniz ("Defendants") in *Mark Harris v. United Parcel Service, Inc., et al.*, Case No. C-08-0315 MMC ("Harris I"), and *Mark Harris v. United Parcel Service, Inc., et al.*, Case No. C-08-01810 JSW ("Harris II"), hereby move the Court for an Order holding that *Harris I* and *Harris II* are not related pursuant to Civil Local Rule 3-12(a). *Harris I* and *Harris II* should be not designated as related because there is little to no likelihood that there will be an unduly burdensome duplication of labor and expense or conflicting results if *Harris II* is conducted before a different Judge. Defendants base their Motion on this Notice of Motion, Administrative Motion Opposing Designation of *Harris I* (Case No. C-08-0315 MMC) and *Harris II* (Case No. C-08-1810 JSW) As Related, the Stipulation That Cases Are Not Related, Pursuant To Northern District Of California Civil Local Rule 3-12, the papers and records on file in this case, and on such oral and documentary evidence as the parties may present at the hearing of the motion.

DATED: April 9, 2008

E. JEFFREY GRUBE
KERRI N. HARPER
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By: _____ /s/ Kerri N. Harper
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UNITED PARCEL SERVICE, INC., TONY AGENJO,
AND KIMBERLY MUNIZ

1 ADMINISTRATIVE MOTION TO CONSIDER CASES RELATED

2 On April 7, 2008, the Honorable Judge Jeffrey S. White issued a *Sua Sponte*
 3 Judicial Referral for Purposes of Determining Relationship of Cases (“Order”) referring the
 4 matter entitled *Mark Harris v. United Parcel Service, Inc., et al.*, Case No. C-08-01810 JSW
 5 (“*Harris II*”), to the Honorable Judge Maxine M. Chesney to determine whether it is related to the
 6 matter entitled *Mark Harris v. United Parcel Service, Inc., et al.*, Case No. C-08-0315 MMC
 7 (“*Harris I*”). Pursuant to Civil Local Rule 3-12 of the United States District Court, Northern
 8 District of California, Defendants United Parcel Service, Inc., Tony Agenjo, and Kimberly Muniz
 9 (collectively “Defendants”) file this response to the Order opposing designation of *Harris I* and
 10 *Harris II* as related because there is little to no likelihood that there will be an unduly burdensome
 11 duplication of labor and expense or conflicting results if *Harris II* is conducted before a different
 12 Judge.

13 RELATIONSHIP BETWEEN THE ACTIONS

14 Northern District of California Civil Local Rule 3-12 (“Rule 3-12”) provides that
 15 “[a]n action is related to another when: (1) the actions concern substantially the same parties,
 16 property, transaction or event; *and* (2) it appears likely that there will be an unduly burdensome
 17 duplication of labor and expense or conflicting results if the cases are conducted before different
 18 judges.” Civ. L.R. 3-12(a) (emphasis added). The parties have stipulated that *Harris I* and
 19 *Harris II* are not related.

20 Although *Harris I* and *Harris II* involve the exact same parties—Plaintiff Mark
 21 Harris and Defendants UPS, Muniz, and Agenjo—and similar claims, it is not likely that there
 22 will be an unduly burdensome duplication of labor and expense or conflicting results if *Harris II*
 23 is conducted before a different judge as *Harris I*. Here, *Harris I* and *Harris II* were removed
 24 from the state court case filed in the Superior Court of California for the County of Alameda
 25 entitled *Mark Harris v. United Parcel Service, Inc., et al.*, Case No. RG-07-353967. UPS
 26 removed *Harris I* based on the fraudulent joinder of Agenjo and Muniz in Plaintiff’s original
 27 Complaint. Judge Chesney remanded the case after receiving a stipulation from the parties to
 28 stay the case pending a written decision from the California Supreme Court in *Jones v. Lodge at*

1 *Torrey Pines*, Case No. S151022, which would decide whether individuals are liable for
 2 retaliation in violation of California's Fair Employment and Housing Act ("FEHA"). Judge
 3 Chesney found that the joinder of Agenjo and Muniz was not fraudulent because the law was
 4 unsettled as to whether individuals were liable for retaliation under FEHA. *Harris I*, No. C-08-
 5 0315 (N.D. Cal. Feb. 22, 2008) (order remanding case to superior court) ("Remand Order"). The
 6 Remand Order did not examine any other factual or legal issue in the case. Additionally, the
 7 Parties had not filed any motions in *Harris I* at the time of remand. Defendants removed *Harris*
 8 *II* based upon Plaintiff's First Amended Complaint ("FAC"), filed on March 5, 2008. With the
 9 exception of attempting to coordinate Plaintiff's deposition and document production, no other
 10 legal proceedings have occurred in *Harris I* or *Harris II*.

11 Because *Harris I* was remanded at such an early stage in litigation and was
 12 remanded based solely on one narrow issue, there is little to no likelihood that there will be an
 13 unduly burdensome duplication of labor and expense or conflicting results if *Harris II* is
 14 conducted before a different Judge. Thus, the cases do not meet the requirements of Civil Local
 15 Rule 3-12(a)(2) and should not be designated as related.

16 **TREATMENT OF HARRIS II**

17 Based on the foregoing, Defendants ask the Court for an order holding that *Harris*
 18 *I* and *Harris II* are not related pursuant to Civil Local Rule 3-12(a), and providing that *Harris II*
 19 shall remain with the Honorable Jeffrey S. White.

20 DATED: April 9, 2008

21 E. JEFFREY GRUBE
 22 KERRI N. HARPER
 23 ANNA L. CHU

24 PAUL, HASTINGS, JANOFSKY & WALKER LLP

25 By: _____ /s/ Kerri N. Harper
 26 KERRI N. HARPER

27 Attorneys for Defendants
 28 UNITED PARCEL SERVICE, INC., TONY AGENJO,
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